

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Change of Zone #3379

DATE: October 16, 2002

SCHEDULED PLANNING COMMISSION MEETING:

October 30, 2002

PROPOSAL: To change the zone from R-4, Residential to I-1, Industrial at N. 58th Street and 120' north of Ballard Avenue.

LAND AREA: 0.71 acres, more or less.

CONCLUSION: The Industrial district/use encroaches into the residential district and is not in conformance with the goals and objectives of the 2025 Comprehensive Plan.

<u>RECOMMENDATION:</u>

Denial

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 1, except a triangle in the NW corner thereof, and Lots 2-4, Block 36 Havelock Addition.

LOCATION: Generally located at N. 58th Street and 120' north of Ballard Avenue.

APPLICANT: Marvin and Barbara Armstrong
HRC 30, Box 22
Warsaw, MO 65355
(660)221-4940

OWNER: Same

CONTACT: William Olson
134 S. 13th Street, Suite 800
PO Box 81617
Lincoln, NE 68501
(402)438-2500

EXISTING ZONING: R-4, Residential

EXISTING LAND USE: A single family dwelling was built in 1910 on Lot 3, Lots 1,2 and 4 are being used for outdoor storage associated with the

industrial area which is an illegal use. This has been reported to the Building and Safety Department.

SURROUNDING LAND USE AND ZONING:

North:	LES, commercial	I-1, Industrial, H-3, Highway Commercial
South:	Residential	R-4, Residential
East:	Residential	R-4, Residential
West:	Industrial	I-1, Industrial

HISTORY: The area was zoned B, Two-Family Dwelling district until it was updated to R-4, residential during the 1979 zoning update.

COMPREHENSIVE PLAN SPECIFICATIONS: This area is shown as Urban Residential in the 2025 Comprehensive Plan. (Page F 25)

Guiding Principles for Residential Neighborhoods indicated that “Construction and renovation within the existing urban area should be compatible with the character of the surrounding neighborhood,” (F-18)

The 2025 Comprehensive Plan indicates that Guiding Principles for existing neighborhoods should “Encourage a mix of compatible land uses in neighborhoods, but similar uses on the same block face. Similar housing types face each other; single family faces single family, change to different use at rear of lot” (Page F 69)

General Principles for All Commercial and Industrial Uses indicates that: “Commercial and industrial districts shall be located in sites supported by adequate road capacity” and “in areas compatible with existing or planned residential uses”. (Page F 39)

General Principles for light industrial areas indicates that they “shall be cited in advance in the land use plan in order to ensure the public safety and adequate infrastructure” (Page F 40) and indicates that “centers can be located closer to residential, however, they should be buffered through landscaping, large setbacks and transitional uses, such as office or open space”. (Page F 40)

The 2025 Comprehensive Plan indicates that there should be a “transition of uses; less intensive office uses near residential areas”. (Page F 21)

The 2025 Comprehensive Plan indicates that N 58th Street is a local road. Local roads are “lower order facilities that essentially serve as a conduit between abutting properties and higher order streets. Local streets provide the lowest level of mobility and generally exhibit the lowest traffic volumes” (Page F 105).

UTILITIES: The water main in N. 58th Street abutting these lots is a 6" main which is substandard for potential I-1, Industrial uses.

TRAFFIC ANALYSIS: N. 58th Street is built to residential standards in width and thickness with 60' of right-of-way. The other existing streets in the vicinity are also residential in design and are not designed for industrial purposes. Any lot that fronts on a public street has the right to access that street. The right-of-way for Ballard Avenue is 80'.

ANALYSIS:

1. This is an application for a change of zone from R-4, Residential to I-1, Industrial on 4 lots. The Building and Safety Department received complaints about this property and then notified the owner that they were in violation of Title 27, Zoning Ordinance and told them to remove all material being stored from the lots. These lots should be returned to residential uses in conformance with the 2025 Comprehensive Plan, and Title 27 Zoning Ordinance.
2. Once a property is re-zoned, any of the permitted uses of the district are allowed. Permitted uses in the I-1, Industrial district include uses which may have various noise and air pollution incompatibilities with the residential neighborhood. Title 27 indicates that the I-1, Industrial district is for "*light and heavy industrial use and having a relatively high intensity of use and land coverage*". The intensity of use is not compatible with the surrounding residential neighborhood.
3. The I-1, Industrial district is not appropriate in this location as it encroaches into the residential neighborhood. The 2025 Comprehensive Plan is clear that industrial uses should not encroach into residential neighborhoods, should be screened and new areas be buffered by less intensive uses, such as low density office.
4. The only street access to this property is N. 58th Street which serves residential uses. The City of Lincoln Design Standards require 33' of paving (no parking) or 39' of paving (with parking) for industrially used local roads. N. 58th Street is not designed for industrial traffic.
5. The Public Works & Utilities Department indicated that the water main in N. 58th Street is substandard for the intensity of an industrial use.

Prepared by:

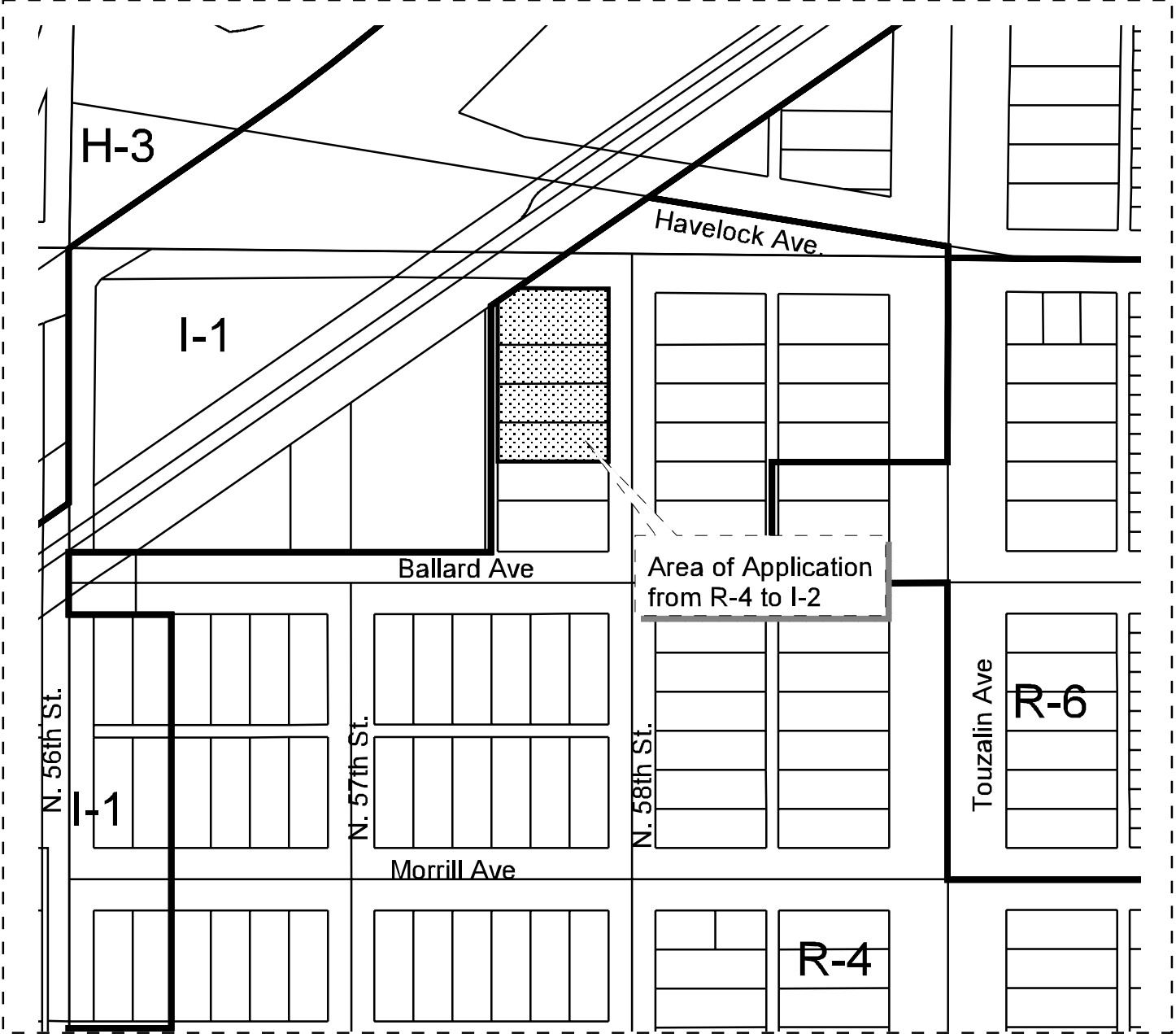
Becky Horner
Planner



Change of Zone #3379
N. 58th St. & Havelock Ave.



Photograph Date: 1997

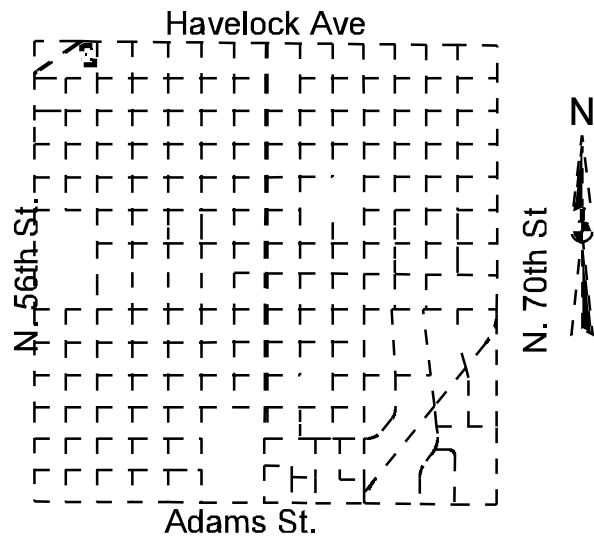
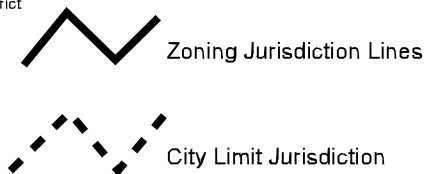


Change of Zone #3379 N. 58th St. & Havelock Ave.

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 9 T10N R7E





Law Offices
134 South 13th Street, Suite 800
Post Office Box 81607
Lincoln, Nebraska 68501-1607

Phone: (402) 438-2500
Fax: (402) 438-6329

James J. DeMars
James E. Gordon
William E. Olson, Jr.
James C. Zalewski
Nancy R. Wynner

(via facsimile transmittal)
(402/441-6377)

October 3, 2002

Ms. Becky Horner
Lincoln Lancaster County Planning Department
555 So. 10th Street
Lincoln, NE 68508

RE: Application for Change of Zone for Armstrong Property
Located at Approximately 58th & Ballard Street

Dear Ms. Horner:

Please correct the Application for Change of Zone previously submitted to indicate that the zoning application should be changed to I-1.

Thank you for your continued cooperation.

Very truly yours,

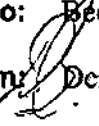
William E. Olson

WEO:sk

cc: Marvin & Barbara Armstrong



M e m o r a n d u m

To: Becky Horner, Planning
From:  Dennis Bartels, Public Works and Utilities
Subject: Change of Zone #3379, 58th and Havelock

Date: October 1, 2002

cc: Randy Hoskins
Nicole Fleck-Tooze

Engineering Services recommends denial of the change of zone from R4 to I1 for the property south of Havelock, west of 58th Street. The existing 58th Street is built to residential standards in width and thickness. The other existing streets in the vicinity are also residential in design. The water main in 58th Street abutting these lots is a 6" main which is also substandard for potential I1 uses.

LINCOLN



BUILDING AND SAFETY

NEBRASKA'S CAPITAL CITY

MIKE JOHANNIS, MAYOR

April 4, 1996

Donald L. Dunn
Rembolt Ludtke & Berger
1201 Lincoln Mall, Suite 102
Lincoln, NE 68508

Re: Marvin Armstrong - 58th & Havelock Avenue

Dear Mr. Dunn

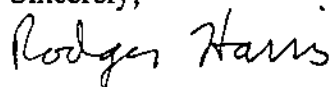
This letter is in reference to the commercial storage use of property near 58th and Havelock Ave. More particularly the property involved is described as Lots 1, 2, 3, and 4, Block 36, Havelock, Lincoln, Lancaster County, Nebraska. This property is located within the R-4 Residential zoning district and abutting property on the west which is with the I-1 Industrial zoning district. A portion of the described property is currently use as commercial open storage. Another portion of the described property appears to be occupied by a single family dwelling.

Initially, we contacted Mr. Armstrong about the use of the property and were advised that the use had been continuously used for a commercial activity since before 1953. In order to establish a nonconforming use, Mr. Armstrong was advised that two affidavits, from persons who would be expected to have knowledge of the area and describing the use of the land, were necessary.

However, we may have inadvertently guided Mr. Armstrong in the wrong direction in view of the requirements of Section 27.61.070 of the Lincoln Municipal Code. This section on open storage in R-1, R-2, R-3 and R-4 Districts provides for the discontinuance of open storage uses. Please discontinue the open storage use of the appropriate portions of the above described property. A copy of Section 27.61.070 LMC is enclosed.

Please contact this department if you have any questions concerning this matter.

Sincerely,

A handwritten signature in cursive script that reads "Rodger Harris".

Rodger Harris
Zoning Coordinator

pc: Marvin Armstrong
Ernest Peo III
Chuck Zimmerman
Roy Bretthorst

4319N_58.CPL



January 23rd, 2001

CERTIFIED MAIL

All Road Barricades
5700 Ballard Avenue
P. O. Box 29196
Lincoln, NE. 68529

Attn: Peggy Shalla

Dear Ms. Shalla:

Inspection of the premises along North 58th Street between Ballard & Havelock Avenue, found that you are using Lot. 1 and a portion of Lot. 2, plus Lot. 4 of Block 35, Original Havelock for storage of equipment. (See enclosed maps.) Our records indicate that the lots have always been zoned for only residential uses. You mentioned in our telephone conversation of 01/19/2001, that the owner, Marvin Armstrong, stated he has some sort of legal non-conforming status for the current use. Our records do not indicate any such deviation from the existing residential zoning.

I ask that you either permanently vacate the R-4 zoned area and the platted alley between the R-4 & I-1 zoning by February 25th, 2001, or have on file with the city, a change of zone request for these lots.

A reinspection will be made after February 25th, 2001, to see that the violation has been resolved. Any questions may be directed to me at 441-6403.

Sincerely,

BUILDING & SAFETY DEPARTMENT

Mel Goddard

Mel Goddard
Chief Building Inspector

cc: Mike Merwick, Director
Ron Peery, Inspections & Enforcement Manager
Chuck Zimmerman, Building Services Manager
File

DC526

RECEIVED JAN 25 2001	
Is your RETURN ADDRESS completed on the reverse side?	
3. Article Addressed to: Peggy Shalla - CITY BUILDING & SAFETY all Road Barricades P O Box 29196 5700 Ballard Ave Lincoln, NE 68529	
4a. Article Number 7000 05200017 05916120	
4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
7. Date of Delivery 1-24-01	
5. Received By: (Print Name) Fred Miller	
6. Signature: (Addressee or Agent) X <i>Fred Miller</i>	
8. Addressee's Address (Only if requested and fee is paid)	
PS Form 3811, December 1994 102595-97-B-0179 Domestic Return Receipt	

Thank you for using Return Receipt Service.

Lincoln



Nebraska's Capital City

CERTIFIED MAIL

August 5, 2002

Mr. Marv Armstrong
HCR 30, Box 22
Warsaw, Missouri 65355

Dear Mr. Armstrong:

Re: 5700 Ballard Avenue in Lincoln, Nebraska

On January 23, 2001, a notice was sent to your tenant, All Road Barricades, Inc., to vacate Lot 1, a portion of Lot 2 and Lot 4, Block 35, Havelock Addition, which is being used to store equipment for their business. These lots (zoned R-4) can not be used for commercial purposes.

Inclosed is a copy of a letter from Rodger Harris, in this office, to your attorney, Donald Dunn, dated April 4, 1996. This letter notified you that this use was to cease in accordance with Section 27.61.070 of the Lincoln Municipal Code.

All Road Barricades, Inc. is to permanently vacate the area zoned R-4 by September 1, 2002. The fence surrounding the 2 areas must also be removed. The business premises must stay within the boundaries of the I-1 zoned district.

Questions concerning this matter may be directed to me at 402-441-6423.

Sincerely,

Building & Safety Department

Mel Goddard
Chief Building Inspector

Pc: Mike Merwick, Director
Ron Peery, Manager
Chuck Zimmerman, Manager
Rodger Harris, Zoning Administrator
Peggy Shalla, All Road Barricades, Inc., 5700 Ballard Ave, Lincoln, NE 68507
File

ebbltr-armstrong

27.61.070 Open Storage.

Where land within the R-1, R-2, R-3, and R-4 Districts contains no main buildings as distinguished from accessory buildings and fences, and where said land was used solely for open storage immediately prior to the effective date of this title, use of such land for open storage shall be discontinued within two years.

Where land is used for a nonconforming or nonstandard use in conformance with the provisions of this chapter and where such land contains a main building or structure in addition to open storage, said open storage shall be brought in conformance with the area, front yard, side yard, rear yard, height, unobstructed open space, and parking requirements for the district in which it is located within the period of one year from the effective date of this title. (Ord. 12571 § 301; May 8, 1979).

27.61.080 Effect on Use Which Is Illegal Under Prior Law.

Nothing in this title shall be interpreted as authorization for, or approval of, the continuance of the use of a building or premises in violation of zoning regulations in effect immediately prior to the effective date of this title. (Ord. 12571 § 302; May 8, 1979).

27.61.090 Continuation of Nonstandard Uses.

Nonstandard uses existing immediately prior to the effective date of this title may be continued, although such uses do not conform to the provisions hereof.

Nonstandard structures and buildings may be enlarged, extended, or reconstructed, as follows:

(a) Enlargements, extensions, or reconstructions may be made as required by law or ordinance or ordered by the Director of Building and Safety to secure the safety of the structure;

(b) Enlargement, extension, or reconstruction of buildings or structures may otherwise be made if such changes comply with the minimum requirements as to front yard, side yard, rear yard, height, and unobstructed open space for the district in which they are located. (Ord. 12894 § 23; April 7, 1980; prior Ord. 12571 § 303; May 8, 1979).

CITY OF LINCOLN ZONING APPLICATION

Honorable City Council

Date September 3, 2002

City of Lincoln, Nebraska

City Application No. _____

Under the provisions of Title 27 of the Lincoln Municipal Code, the undersigned hereby applies for a:

<input checked="" type="checkbox"/> Change of zone from <u>R 4</u> to <u>I-1</u> <input type="checkbox"/> Change of zone, (text) 27. <small>*NOTE: City policy requests that text amendments be presented to the Mayor's Neighborhood Roundtable</small> Presentation Date _____ <input type="checkbox"/> Use Permit <input type="checkbox"/> Pre-Existing Use Permit _____ <input type="checkbox"/> Waiver of Design Standards	<input type="checkbox"/> Special Permit <input type="checkbox"/> Administrative County Special Permit (Wireless) SP Pre-application Conference Date _____ <input type="checkbox"/> Pre-Existing Special Permit # _____ <input type="checkbox"/> Administrative Amendment to SP _____; UP _____; PUD _____ <input type="checkbox"/> Miscellaneous
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

to Change zoning on 4 lots which have been used as industrial and are adjacent to same to I 1 zoning as per Section 27.

(Indicate purpose of application)

Property Owner Marvin L. Armstrong and Barbara Armstrong

(660) 221-4940
Telephone

Address HCR 30, Box 22, Warsaw, MO 65355

Email

Applicant (Permittee) Name William E. Olson, Attorney for Owner

(402) 438-2500
Telephone

Address Suite 800, 134 S. 13th Street, P.O. Box 81607, Lincoln, NE 68501

woolson@demarsgordon.com
Email

Contact Name William E. Olson, Attorney

(402) 438-2500
Telephone

Address Suite 800, 134 S. 13th Street, P.O. Box 81607, Lincoln, NE 68501

woolson@demarsgordon.com
Email

Project Legal Description: Lot(s) Lot 1, Except a triangle in the NW Block(s) 36

corner thereof, Lot 2, Lot 3 & Lot 4

Havelock
Addition, _____ Section, _____ T _____ N, R _____ E

☐ See attached Legal Description (hard copy and digital if available)

Project Address/Location West side of N. 58th Street, 4300 Block, North from 4319 N. 58th

Applicant's (Permittee's) Signature

William E. Olson, Attorney

Property Owner's Signature

* NOTE: If applicant is not owner of the premises, the owner's signature (or written permission of the owner authorizing the applicant to sign on behalf of the owner) must be affixed to this application. The applicant and owner's signatures (or owner's written permission) certifies that permission is granted by the owner to all authorized city/county personnel to enter the premises for the purpose of review of this application.
 **NOTE: Change of Zone applications do not require the property owner's signature.

Planning Department Use Only:

Permit Name & Location: <u>N. 58th & Havelock</u>	Permit No. <u>62-3379</u>
Date: <u>9/10/02</u>	Fee Paid \$ <u>\$290.00</u>
Planner: <u>Becky Harner</u>	Receipt No. <u>159093</u>